



FEDERAL ELECTION COMMISSION
Washington, DC 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUL 17 2015

Kelly Maher, Executive Director
Compass Colorado
P.O. Box 181581
Denver CO 80218

RE: MUR 6866

Dear Ms. Maher:

This letter concerns the complaint you filed with the Federal Election Commission on September 9, 2014, concerning possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Mark E. Udall. Based on the information provided in your complaint and information provided by the respondent, the Commission decided to dismiss this matter and closed the file on July 14, 2015. The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8) (formerly 2 U.S.C. § 437g(a)(8)).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Daniel A. Petalas
Associate General Counsel for Enforcement

A handwritten signature in black ink, appearing to read "Mark Allen", is written over the typed name.

BY: Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENT: Mark Udall

MUR 6866

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8 **I. INTRODUCTION**

9 This matter was generated by a complaint filed with the Federal Election Commission
10 alleging that then-U.S. Senator and federal candidate Mark Udall illegally solicited non-Federal
11 funds in connection with a fundraiser for Colorado state House candidate Crisanta Duran in
12 violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). In light of the
13 small amount of funds potentially at issue, it is not worth the use of further Commission
14 resources to pursue this matter. The Commission, therefore, exercises its prosecutorial discretion
15 and dismisses the Complaint in this matter.

16 **II. FACTUAL AND LEGAL ANALYSIS**

17 **A. Facts**

18 On August 23, 2014, then-U.S. Senator and U.S. Senate candidate Mark Udall appeared
19 as a "special guest" at a fundraiser for Crisanta Duran, a Colorado state representative who was
20 seeking re-election to her state House seat. The fundraiser was advertised as a "Campaign Kick-
21 off and Birthday Celebration."¹ A transcript of remarks by Udall and other speakers indicates
22 that Udall solicited donations for Duran's re-election at the fundraiser, stating in pertinent part:

23 . . . So, [Duran's] a 30-something and multiply that by three, that means everybody
24 should have at least written a \$100 check. Cause we need to send her back
25 to the State House and we need to keep the State House in the majority"²
26

¹ Compl. at 1.

² Compl. Ex. A.

Information attached to the Complaint shows that the fundraiser was publicized on Twitter and in an electronic invitation prior to the event. Specifically, Complainant provided a copy of a state campaign finance complaint she filed against Duran's state campaign committee, Duran for Colorado ("DFC"),³ which includes information about the fundraiser, including a tweet sent from a Duran Twitter account, @crisantaduran, the day before the event. The tweet states, "Tacos, cupcakes & live music tomorrow night? madmimi.com/p/be6405?fe=1&... [link to electronic invitation] Everyone is invited!"⁴ The link embedded in the tweet directs the reader to an electronic invitation inviting the public to a "Campaign Kick Off & Birthday Celebration with Special Guest U.S. Senator Mark Udall" on August 23, 2014, and lists the venue address and time.⁵ The invitation asks the reader to join a list of hosts who have already sponsored the event at the gold (\$400) and silver (\$250) levels; Udall and a number of state and local officials are listed as "special confirmed guests." The invitation solicits a "Suggested Donation" of \$50 but notes that donations are "welcome but not required."

Hyperlinks embedded in the electronic invitation redirect recipients to an ActBlue⁶ fundraising page for "Crisanta Duran for Colorado" that provides clickable options for one-time

³ See Compl. at 1 and Ex. B ("state complaint"). The state complaint, filed one day before the Complaint was filed in this matter, alleges that DFC violated Colorado state law by accepting in-kind corporate contributions in the form of food and drinks for the August 23, 2014, fundraiser.

Following a September 22, 2014, public hearing on the state complaint, an Administrative Law Judge issued an "Agency Decision" finding that DFC did not violate Colorado law. See *In the Matter of the Complaint filed by Kelly Maher Regarding Alleged Campaign and Political Finance Violations by Duran for Colorado, a Candidate Committee*, Case No. OS 2014-0024, State of Colorado Office of Administrative Courts, (Nov. 13, 2014) ("state decision").

⁴ State Compl. at Ex. A (Twitter post).

⁵ State Compl. at Ex. B (electronic invitation).

⁶ ActBlue, a Massachusetts limited liability company, operates and maintains a website that provides Internet-based tools for Democratic candidates and committees to solicit and process contributions. It is also registered with the Commission as a non-connected committee. See Advisory Op. Req. at 1, AO 2014-19 (ActBlue) and Advisory Op. Req. at 1, AO 2007-27 (ActBlue).

1 contributions of \$25, \$100, \$250, and a blank box to enter any amount.⁷ Below the one-time
2 amount options, the page provides a second clickable option to make monthly contributions in
3 the aforementioned amounts for six months or one year. The bottom of the ActBlue donation
4 page provides "Contribution Rules" written in the form of affirmations by the donor that:

- 5 1. This contribution is made from my own funds, and funds are not being
6 provided to me by another person or entity for the purpose of making a
7 contribution.
- 8 2. I am making this contribution with my own personal credit card and not
9 with a corporate or business credit card or card issued to another person.
- 10 3. I am at least eighteen years old.
- 11 4. I am a United States Citizen.

12 The available information shows that the fundraiser was co-hosted by DFC and Duran for
13 Colorado Leadership Fund (the "Leadership Fund")⁸, a state political committee able to raise and
14 accept corporate and union contributions.⁹ The administrative decision resolving the state
15 complaint against DFC recognizes as a "stipulated fact" that DFC co-hosted the fundraiser with
16 the Leadership Fund.¹⁰ The administrative decision resolving the state complaint against DFC
17 also recognizes as "stipulated facts" that corporate donations were raised at the fundraiser, and
18

⁷ State Compl. at Ex. C (ActBlue donation page).

⁸ The Leadership Fund's stated purpose at the time of the fundraiser was "to support Democratic candidates to the Colorado General Assembly." Committee Registration Form, *id.* (Apr. 14, 2014). Duran has served as the registered agent of the Leadership Fund since its inception in October 2012. See Committee Registration Form, Duran for Colorado Leadership Fund (Oct. 2, 2012) and amended Committee Registration Form, *id.* (Oct. 6, 2014), available at <http://tracer.sos.colorado.gov/PublicSite/SearchPages/FilingAmendmentSelect.aspx?FilingID=151560>.

⁹ Colorado law prohibits state candidate committees from accepting corporate and union contributions, but other types of state political committees may accept corporate and labor union contributions of up to \$550 per the two-year state House election cycle. See COLORADO CONST. art. XXVIII § 3(4)(a) (prohibiting candidate committees from accepting contributions from corporations and labor unions) and COLO. REV. STAT. § 1-45-103.7(1) (2014) (clarifying that nothing in the Colorado Constitution shall be construed to prohibit a corporation or labor organization from making a contribution to a political committee). See also Colorado Secretary of State, *Colorado Campaign and Political Finance Manual* (August 2014) at 41 (chart indicating that corporate and labor unions may contribute up to \$550 to political committees per two-year House election cycle), available as a PDF at <http://tracer.sos.colorado.gov/PublicSite/Search.aspx>.

¹⁰ State decision at 2, n.5.

1 that all corporate checks were written to the Leadership Fund.¹¹ Of the donations the Leadership
2 Fund reported receiving during that period, at most \$1,850 is attributable to identifiable
3 corporations and a union, including \$750 in in-kind contributions of food and drinks from
4 incorporated small businesses listed in the invitation.¹²

5 **B. Legal Analysis**

6 The Act and Commission regulations prohibit federal candidates and officeholders from
7 soliciting funds in connection with a non-Federal election unless those solicitations are restricted
8 to funds that are from sources permitted by the Act, that are in amounts that do not exceed the
9 Act's contribution limits, and that are consistent with State law.¹³ Federal candidates and
10 officeholders may participate in fundraising events held in connection with a non-Federal
11 election at which federally non-compliant funds are solicited and in publicity for those events,
12 but their participation is governed by Commission regulations at 11 C.F.R. § 300.64.¹⁴
13 Specifically, federal candidates and officeholders are permitted to attend, speak, or be a featured
14 guest at fundraising events for non-Federal elections, and may solicit funds, but must limit any
15 solicitations to amounts and sources permissible under the Act.¹⁵ A Federal candidate or

¹¹ State decision at 2, n.5.

¹² The identifiable federally impermissible donations were: \$550 each from UCFW Local 881 and Viaero Wireless on August 27, 2014, and in-kind contributions on August 23, 2014, of \$550 from Bonaquisit Wine Co. and \$200 from Los Carboncitos for food and wine for the fundraiser.

¹³ 52 U.S.C. § 30125(e)(1)(B); 11 C.F.R. §§ 300.60, 300.62. *See also* 52 U.S.C. §§ 30116(a)(1)(A) and (a)(2)(B) (limiting per-election contributions to \$2,600 from individuals and \$5,000 from non-party multi-candidate political committees during the 2014 election cycle); 30118(a) (prohibiting corporate, labor organization, and national bank contributions); 30119 (prohibiting contributions from federal contractors and prohibiting any person from knowingly soliciting such contributions); and 30121 (prohibiting contributions and donations from foreign nationals and prohibiting any person from soliciting, accepting or receiving such contributions).

¹⁴ *See also* Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events, 75 Fed. Reg. 24,375, 24,377 (May 5, 2010) (Explanation & Justification) ("Non-Federal Fundraising Events E&J").

¹⁵ 52 U.S.C. § 30125(e)(3); 11 C.F.R. § 300.64.

1 officeholder may limit his or her solicitation by displaying at the fundraiser a clear and
2 conspicuous written notice or by making a clear and conspicuous oral statement that the
3 solicitation does not seek funds in excess of \$2,600 from individuals or \$5,000 from non-party
4 multi-candidate federal political committees and does not seek funds from corporations, labor
5 organizations, national banks, federal government contractors, or foreign nationals.¹⁶ The oral
6 statement can be made by the Federal candidate or officeholder or an event official before any
7 solicitations are made by the Federal candidate or officeholder, such as in opening remarks.¹⁷

8 Further, a Federal candidate or officeholder or his or her agent may approve, authorize,
9 agree to, or consent to the use of the Federal candidate's or officeholder's name in publicity for a
10 fundraiser for a non-Federal election that contains a solicitation for funds outside the Act's
11 limitations and source prohibitions only if: 1) the candidate is identified, *inter alia*, as a featured
12 or special guest or in a manner not related to fundraising; and 2) the publicity includes a clear
13 and conspicuous disclaimer that the solicitation is not being made by the Federal candidate or
14 officeholder. 11 C.F.R. § 300.64(c)(3)(i)(A) and (B). The following disclaimer is an example
15 that satisfies the clear and conspicuous requirement: "All funds solicited in connection with this
16 event are by [name of non-Federal candidate or entity] and not by [name of Federal
17 candidate/officeholder]." 11 C.F.R. § 300.64(c)(3)(iv).

18 The Complaint alleges that Udall violated the Act by soliciting non-Federal funds at the
19 August 23, 2014, fundraiser, focusing on his oral solicitation that "everybody should have at
20 least written a \$100 check . . . [be]cause we need to send her back to the State house" The
21 Complaint appears to suggest either that Udall's solicitation was illegal because he asked for

¹⁶ See 11 C.F.R. § 300.64(b)(2).

¹⁷ Non-Federal Fundraising Events E&J, 75 Fed. Reg. at 24,380.

1 funds to help re-elect Duran to state office or because he solicited donations at a fundraiser
2 where illegal in-kind corporate contributions were solicited and accepted by DFC in the form of
3 food and drink provided by corporate vendors.¹⁸

4 Udall argues that his solicitation complied with Section 30125(e)(1) and 11 C.F.R.
5 § 300.62 because, “[a]ccording to the complaint, [he] asked each individual attendee for \$100,
6 well below the \$2,600 limit for federal candidates and within the \$200 limit for state house of
7 representative candidates in Colorado.”¹⁹ Udall contends that the funds were requested from
8 individuals only, citing Colorado’s prohibition on corporate and labor organization donations to
9 state candidates. *Id.* Udall also maintains that neither the Act nor the regulations require federal
10 candidates to inquire whether a sponsoring campaign paid fair market value for event costs.
11 Udall further maintains that even if DFC accepted an in-kind corporate contribution at the event,
12 a federal candidate can still solicit federally permissible funds at an event where non-Federal
13 funds are raised, citing the Non-Federal Fundraising Events E&J, 75 Fed. Reg. at 24,376. *Id.*
14 The Response does not specifically address the invitation to the fundraiser attached in Complaint
15 Exhibit B.

16 The Leadership Fund disclosed the receipt of only \$1,850 in identifiable federally
17 prohibited funds apparently attributable to the fundraiser in question. In light of this limited
18 amount, this matter does not warrant the use of further Commission resources to investigate

¹⁸ Compl. at 1 and by reference to Ex. B at 3. The Complaint does not cite a specific provision of the Act or regulations in alleging that Udall illegally solicited funds, but the Commission reads it as an allegation that Udall violated Section 30125(e)(1)(B). In a parenthetical below the Complainant’s signature, the Complaint states that legal citations for the campaign finance violations alleged have been omitted “[i]n accord with Federal Election Commission guidance.” The meaning of the statement is unclear.

¹⁹ Resp. at 2.

- 1 whether Udall's statements constituted an impermissible solicitation, whether an acceptable
- 2 disclaimer was provided at the fundraiser, or whether Udall consented to the use of his name in
- 3 the electronic invitation.²⁰ Accordingly, the Commission exercises its prosecutorial discretion
- 4 and dismisses the Complaint in this matter.

²⁰ See Factual and Legal Analysis at 7, MUR 5918 (Delaware Republican Committee) (Commission dismissed as an exercise of its prosecutorial discretion matter involving pre-event publicity featuring a federal candidate where the estimated total amount raised at the fundraiser was \$4,875, and it appeared unlikely that attendees contributed amounts vastly higher than the \$15-\$25 ticket price despite the "fill in the blank" contribution option in the invitation).